



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,800	03/30/2005	David C Racenet	2863(203-3511)	5353
50855 7590 04/03/2009 Tyco Healthcare Group LP 60 MIDDLETOWN AVENUE NORTH HAVEN, CT 06473				
EXAMINER				
LOPEZ, MICHELLE				
ART UNIT		PAPER NUMBER		
3721				
MAIL DATE		DELIVERY MODE		
04/03/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/529,800

Applicant(s)

RACENET, DAVID C

Examiner

Michelle Lopez

Art Unit

3721

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 48-54.
Claim(s) objected to: _____.
Claim(s) rejected: 26 and 29-47.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Stephen F. Gerrity/
Primary Examiner, Art Unit 3721

Continuation of 5. Applicant's reply has overcome the following rejection(s): the rejection of claims 48-54 under 35 USC 103 as being unpatentable over McGuckin in view of Bolanos. Examiner agree that the cited prior art fails to disclose a dynamic clamping member having an upper flange for engaging a surface of an anvil and a lower flange for engaging a surface of a cartridge, wherein at least one of the flanges has an arcuate cross-section along an axis transverse to a longitudinal axis of the cartridge to define an arcuate surface positioned to engage at least one of a surface of the cartridge or the anvil. Note that the most pertinent prior art to Milliman 6669073 shows a dynamic clamping member having a lower flange with at least arcuate ends portions, but such arcuate portions are offset the cartridge surface and do not engage such cartridge surface (see figs. 38,45,49).

Continuation of 11. does NOT place the application in condition for allowance because: With respect to claim 26, applicant contends that Hooven fails to disclose a dynamic clamping member configured to define a maximum tissue gap between the cartridge assembly and the anvil during ejection of the fasteners. However, it should be noted that Hooven is relied upon to show the use of a single actuator 71 connected to and configured to drive multiple members 77 and 86. It is acknowledge that Hooven's device operates differently from McGuckin's device; however, both show the use of hold the anvil and cartridge assemblies together while ejecting fasteners from the cartridge. It would be within the abilities of one having ordinary skill in the art to apply Hooven's concept of using a single driver to McGuckin's device in order to provide a single drive member.

Also, with respect to claim 26, applicant contends that Bolanos sheath 200 and rod 70 are not connected to a clamp member and a dynamic clamping member, respectively, as claimed. However, it should be noted that Bolanos is relied upon to show the use of a drive member as a cable comprising a outer sheath 200 and rod 70 movable within sheath, wherein said sheath and rod drive different members. Note that the claim doesn't specify wherein the outer sheath is connected to the clamp member and wherein the center rod is connected to the dynamic clamping member.

Therefore, the combination of McGuckin, Bolanos, and Hooven is deemed proper and the rejection is maintained.